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10 *Attorney for Defendant American Gaming  
11 Association*

12 **UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA**

14 ERIC EHMANN,

15 Plaintiff,

16 CASE NO.: 2:19-cv-01199-APG-BNW

17 vs.

18 DESERT PALACE, LLC, a Domestic  
19 Corporation, PARIS LAS VEGAS  
OPERATING COMPANY, LLC, a  
Domestic Corporation, CAESARS  
ENTERPRISE SERVICES, LLC, a  
Foreign Corporation, CPLV  
MANAGER, LLC, a Foreign  
Corporation, CEOC, LLC, a Foreign  
Corporation, CAESARS  
ENTERTAINMENT CORPORATION,  
a Foreign Corporation, CAESARS  
RESORT COLLECTION, LLC, a  
Foreign Corporation, and AMERICAN  
GAMING ASSOCIATION, a Foreign  
Corporation,

20 Defendants.

21  
22 **DEFENDANT AMERICAN GAMING  
23 ASSOCIATION'S JOINDER TO  
24 CAESARS DEFENDANTS' REPLY IN  
25 SUPPORT OF MOTION TO DISMISS;**

26 **AND**

27 **REPLY IN SUPPORT OF  
28 SUPPLEMENTAL MOTION TO DISMISS  
SECOND AMENDED COMPLAINT**

29  
30 In opposing AGA's Motion to Dismiss, Plaintiff Eric Ehmann ("Ehmann") cites a lone  
31 case involving mail fraud under 18 U.S.C. § 1341 but otherwise provides no case law addressing  
32 the arguments in AGA's Motion. Specifically, AGA, while joining the Caesars Defendants'  
33 Motion, argued that Ehmann had not pleaded several essential elements of his fraud-based claims  
34 in the Second Amended Complaint ("SAC"), including a false statement by AGA, reliance upon  
35 the same, proximate causation, and any duty or relationship between Ehmann and AGA that would  
36

1 require the disclosures Ehmann seeks regarding the gaming industry. *See* Motion at 4:11-7:9  
2 (ECF No. 26).

3 Ehmann does not rebut these arguments. Instead, he directs the Court to his proposed  
4 Third Amended Complaint (“TAC”) and several purportedly new allegations therein. *See*  
5 Opposition at ¶¶ 4-12 (each referencing allegations in the TAC) (ECF No. 34). He provides no  
6 citations to his SAC, which is the target of AGA’s Motion. *See generally id.* In failing to address  
7 the SAC, Ehmann offers no defense of his SAC and therefore concedes under Local Rule 7-2(d)  
8 that the Court can grant AGA’s Motion because the SAC is defective. *See* LR 7-2(d) (“The failure  
9 of an opposing party to file points and authorities in response to any motion . . . constitutes a  
10 consent to the granting of the same.”).<sup>1</sup>

11 And even if the Court treats Ehmann’s Opposition as focusing on the SAC, it still fails to  
12 rebut any of the arguments AGA raised in its Motion. First, AGA argued that Ehmann did not  
13 satisfactorily plead a false statement of fact by AGA upon which he relied in gaming at the Caesars  
14 Defendants’ properties. *See* Motion at 4:11-6:9 (ECF No. 26). Ehmann’s Opposition does not  
15 identify any specific statement of fact in the SAC, why it is false, or how he relied upon the same.  
16 *See* Opposition at ¶¶ 6-9 (ECF No. 34). On the contrary, Ehmann takes issue with AGA’s  
17 statements of opinion on AGA’s website and from its executives regarding consumer protections,  
18 fairness, transparency, and the identification of problem gamblers. *See id.* But statements of  
19 opinion are not actionable in fraud, and so they do not provide Ehmann with a legal basis to  
20 maintain his SAC. *See Sierra Diesel Injection Serv. v. Burroughs Corp. Inc.*, 651 F. Supp. 1371,  
21 1377 (D. Nev. 1987) (explaining “statements of opinion are not actionable as fraud”). Ehmann  
22 has not pleaded a false statement of fact by AGA upon which he relied, and so the Court can grant  
23 AGA’s Motion.

24 Second, though AGA argued it had no duty of disclosure to Ehmann regarding the gaming  
25 industry because the parties had no relationship, Ehmann does not mention duty once in his

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27 <sup>1</sup> AGA will not argue the TAC’s merits as Ehmann wishes to do because that is addressed  
28 in separate briefing on Ehmann’s Motion for Leave to File Third Amended Complaint.

1 Opposition. *See generally* Opposition (ECF No. 34). Ehmann does not claim in his Opposition  
2 that he is a customer or member of AGA, that he frequented a gaming establishment operated by  
3 AGA, or even that AGA offers any goods or services to the public in Nevada. *See generally id.*  
4 Ehmann offers no other facts showing any relationship between himself and AGA that would  
5 create a duty to disclose information about the gaming industry. *See generally id.* Thus, while  
6 Ehmann may wish such a duty existed, he provides no case law or statute supporting the same,  
7 and the Court is not free to impose a duty in the absence of such legal authority. *See Nevada*  
8 *Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1417 (D. Nev. 1995) (“It is axiomatic that an  
9 individual may only be subject to liability for nondisclosure when he is under a duty to the other  
10 to exercise reasonable care to disclose the matter in question.”); *see also Reno Technology Ctr. I,*  
11 *LLC v. New Cingular Wireless PCS, LLC*, 2019 WL 507461 (D. Nev. Feb. 7, 2019).

12 Third, as did the Caesars Defendants, AGA contended Ehmann’s SAC did not reveal a  
13 nexus between AGA’s purported fraudulent acts and Ehmann’s damages satisfying the proximate  
14 causation element. *See* Motion at 7:1-9 (ECF No. 26). In his Opposition, Ehmann does not  
15 address this point and instead attempts to collapse the distinction between the Caesars Defendants  
16 and AGA to suggest that the alleged acts of the Caesars Defendants are those of AGA. *See*  
17 Opposition at ¶ 12 (claiming AGA is “complicit in Caesars’ fraudulent acts”) (ECF No. 34). There  
18 is no legal support for Ehmann’s position. Even worse, the Caesars Defendants have correctly  
19 pointed out that their alleged acts did not proximately cause any harm to Ehmann. *See* Caesars  
20 Defendants’ Motion to Dismiss at 15:8-17:27 (ECF No. 24). As such, even if Ehmann could  
21 collapse the distinction between the Caesars Defendants and AGA, he has not alleged any  
22 proximate causation by any of the Defendants in his SAC. Nor does his Opposition cure this flaw.

23 Finally, Ehmann has not rebutted AGA’s argument that his state law cause of action is  
24 legally defective. *See* AGA’s Motion to Dismiss at 7:11-8:3 (ECF No. 26). In his Opposition,  
25 Ehmann clarifies that he is invoking NRS 205.377, NRS 598.0915, and NRS 41.600 to provide  
26 the bases for his first cause of action. *See* Opposition at 5 (ECF No. 34). But this does nothing to  
27 cure the defects, as Ehmann cannot rely upon any of these statutes to assert a claim against AGA.  
28 NRS 205.377 is a criminal statute and does not provide for civil liability. *See* Caesars Defendants’

1 Motion at 20:22-21:7 (ECF No. 24). NRS 598.0915 falls within Nevada's Deceptive Trade  
2 Practices Act, which covers transactions between businesses supplying goods or services and  
3 customers purchasing the same. *See* AGA's Motion to Dismiss at 7:23-8:3 (ECF No. 26). But  
4 Ehmann has not alleged that AGA provides any good or service in Nevada to the public, nor that  
5 he was a customer or member of AGA. *See generally* SAC. Thus, the Deceptive Trade Practices  
6 Act has no application to AGA. Finally, NRS 41.600 permits a private cause of action for any  
7 person "who is a victim of consumer fraud," but the predicate "consumer fraud" is an act that  
8 violates the Nevada Deceptive Trade Practices Act. NRS 41.600(1)-(2). Because AGA is not  
9 liable under the Deceptive Trade Practices Act, NRS 41.600 does not provide a cause of action  
10 for Ehmann against AGA.

11 Consequently, though Ehmann has filed three pleadings with the Court and now his current  
12 Opposition, he has been unable to cure any of the pleading defects. Several essential legal  
13 elements of his causes of action are incomplete, and so he has failed to state a claim under FRCP  
14 12. AGA therefore respectfully requests that the Court grant its Motion and dismiss Ehmann's  
15 SAC with prejudice.

16 Dated this 1<sup>st</sup> day of November, 2019.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1<sup>st</sup> day of November, 2019, a true and correct copy of the foregoing **DEFENDANT AMERICAN GAMING ASSOCIATION'S JOINDER TO CAESARS DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS; AND REPLY IN SUPPORT OF SUPPLEMENTAL MOTION TO DISMISS SECOND AMENDED COMPLAINT** was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification and also was served via U.S. Mail, postage prepaid, to the following:

Eric Ehmann  
P.O. Box 2366  
Appleton, WI 54912  
*(Pro Se Plaintiff)*

/s/ *CaraMia Gerard*  
An employee of McDonald Carano LLP